

PATENT
03-10074

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:
Kevin Calloway

Serial Number: 09/708,235

Examiner: Alvarez, Raquel

Filed: 11/7/2000

Art Unit: 3622

For: MULTIMEDIA MESSAGING METHOD AND SYSTEM

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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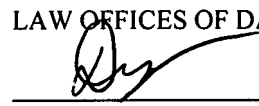
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Respectfully submitted,

LAW OFFICES OF DAVID L. HOFFMAN

Date: September 28, 2007


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REPLY BRIEF UNDER 37 CFR 1.192

Dear Sir or Madam:

In the Examiner's Answer, it is asserted that Hibbeler teaches creation of individualized multimedia messages using recipient information and selecting multimedia content based on the recipient information. Also, that Hibbeler stores messages as text or audio. Further, "official notice" is taken that "it is old and well known to deliver messages in graphic and video format in order to provide a visual representation of data received." However, these incorrect assertions ignore that:

1. the definition of the term "multimedia" which is **specifically set forth in the claims**, such as in claim 1, element (b), where multimedia includes "computer files comprising at least one of text and graphics files, and further comprising at least one of audio and video files," and that there is no basis or reason whatsoever to include video or graphics or text in a VOICE MAIL system such as Hibbeler. The Examiner's Answer is advocating that bits and pieces of the invention can be selected from the prior art and

pasted together whether it makes sense or not. That is not the standard of patentability, now or in the past. Storage as text or audio is not the same as sending a multimedia message. Mere capability, even if it exists, is not the same as obviousness. Moreover, Hibbeler is not capable of sending text or graphics in his audio only system.

2. The assertion also ignores the fact that claim 1 defines a system completely different from Hibbeler, i.e., one in which individualized content is created by the system based on “recipient information.” While the Examiner’s Answer asserts that Hibbeler does so, it is not entirely clear how Hibbeler would do so even given the Examiner’s Answer. In other words, it is asserted that somehow element 1110 in Fig. 11 performs this function of personalizing the content of the message beyond simply putting the name of the recipient into the message. (See Examiner’s Answer, p. 4, 4th and 3rd lines from the bottom). A little more information is given in the “Response to Arguments” section where it is argued that Hibbeler can pick and choose from multiple messages and paste them together into a personalized message (see col. 5, lines 43-45). This is respectfully indicated to be a misapplication of Hibbeler’s teachings, and irrelevant even if it were true.

First, Hibbeler does not teach individualizing the message body for particular recipients. Even assuming that selection of a message body can be done by pasting messages together, there is nothing to indicate or teach how such would be done. In other words, it could be manually directed. Moreover, there is nothing to show that the message body can be changed for a recipient “on the fly”, i.e. after a message is sent. The construction of a message from multiple messages is simply one way to put together a message. There is no teaching that that particular communication can thereafter be

changed. Yet, in the invention, the message body can be changed (e.g., by the unique URL) and can vary with a recipient (again, e.g., by use of unique URL to that individual). Moreover, in Hibbeler, there is NOTHING unique within the message body or anywhere in the message that the RECIPIENT can click on, interact with, or otherwise use to get a further message content.

With respect to Claim 1 it recites a message creation and distribution system where:

- i. the recipient information repository contains unique information about multiple recipients, and
- ii. the multimedia content repository is defined so that it contains (a) at least one of text and graphics files, and (b) at least one of audio and video files.

The defined multimedia content i.e., (a) the text and/or graphics files along with (b) the audio and/or video files, **are selected based on the recipient information** and delivered over the computer network. It is not just “name” data that is being inserted into a voice mail (and not merely “name” data being inserted into an email).

Hibbeler is simply a voice mail personalization method in an all audio (voice mail) medium, and thus it would not have been obvious to one of ordinary skill in the art to create a system for creating and distributing individualized multimedia messages (having video and/or audio together with text and/or graphics) at the time of the invention.

Hibbeler teaches a **phone** message (outbound message) personalization by **inserting a recipient’s first name** from “name storage 100” into a message.

1. While in the Examiner's Answer it is asserted that Hibbeler is multimedia, in Hibbeler, **the message is merely audio**, and thus is not "multimedia," as defined by the claims.

2. While in the Examiner's Answer it is asserted that Hibbeler provides for variations of message from recipient to recipient due to insertion of the recipient's name into the message, in Hibbeler, **the message body does not vary** from recipient to recipient. An audio of the recipient's first name is a "greeting segment" and is simply placed before the message body.

3. In Hibbeler, **there is no selection of message content** based on (but different from just) the individual recipient information.

4. In Hibbeler, **the message is sent and is not changed when sent, whether digital or not. Absolutely no method is disclosed or suggested for changing a message after broadcasting the message. It is classic hindsight to argue otherwise.**

The table and diagrams in the appeal brief helps to understand the above points.

In the Examiner's Answer, it is merely asserted with respect to Claim 12 that the use of email is well known. However, that is irrelevant. Claim 12 not only emphasizes that the multimedia content in addition to text and graphics, includes video and/or audio, in an email message, but also that the video and/or audio files are selected from a group consisting of multimedia format languages. Hibbeler, even if it uses telephony (i.e., uses the internet to deliver an audio message), **only delivers an audio message**. It does not suggest the use of multimedia format messages, and no art is cited to show or suggest this.

In the Examiner's Answer, it is merely asserted with respect to Claim 16 that

Smith teaches a personalized URL (col. 4, lines 35-43). However, Claim 16 specifically recites that the message is formatted to contain a unique URL link **which retrieves the multimedia message content when activated**. According to this aspect of the invention, the content that fills the message need not be sent at the time the message is sent and fills the message later, i.e., when the recipient reads the message and activates the unique URL. This aspect of the invention allows many emails to be sent at the same time extremely quickly. In addition, this aspect of the invention **enables the content of the multimedia message to be changed even after the message has been sent. There is absolutely no suggestion of this feature in Hibbeler. Mere capability of changing a message does not support an obviousness rejection.** Smith, even assuming for purposes of argument that it shows a URL for linking to a document, does not teach the use of such a URL in a system for delivering multimedia content and personalized messages. The URL in Smith is to retrieve a fixed document. Moreover, it would not have been obvious to use a URL link in an audio message of Hibbeler.

The table and diagram in the appeal brief show creation of unique content from the unique URL, and this “backfilling” of message content after sending the email message. This applies to claims 75-78 too.

In the Examiner’s Answer, no argument with respect to the subject matter of Claim 50 appears to be set forth. Claim 50 emphasizes that the content management routine may synchronize combinations of a certain multimedia, i.e., graphic, audio and text, for presentation to the recipient.

In the Examiner’s Answer, it is merely asserted that content of a message can be modified. However, Claim 51 relates to a multimedia engine routine which modifies the

Application No. 09/708,235
Appeal Brief

message content and specifically recites use of offers, discounts, coupons or rebates **after**
the campaign has been deployed, i.e., AFTER the email is sent. No art is cited to
show or suggest the claimed elements, and there is no teaching of it.

Respectfully submitted,

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